

**REMARKS**

Claims 1-34 are pending of which claims 2, 5, 6, 12-14, 17, 18, 21, 22, and 26-34 were previously withdrawn. The Office states at page 2 of the final Office Action that in addition, claims 20 and 23-25 are withdrawn as drawn to a non-elected species 2-4. As stated in applicant's response to the Restriction Requirement mailed on October 1, 2009, a feature common to all of the species is "a closure adapted to co-operate with a portion of the body providing the accommodation for removably enclosing the counter in the accommodation". This feature is still present in claim 1 and consequently rejoinder of the non-elected claims is requested upon allowance of claim 1, as was stated in applicant's response to the Restriction Requirement mailed on October 1, 2009.

In response to the final Office Action of October 27, 2011, independent claim 1 has been amended in a manner which is believed to particularly point out and distinctly claim the invention. In particular, claim 1 has been amended to point out that the closure is adapted to be irremovably connected to the body of the dispenser and that the closure is provided with a frangible portion through which the multi-use counter can be removed so as to make the closure tamper-evident. Support for this amendment is found in the original application as filed, including original claim 3, as well as Figures 1-4 and page 10, lines 8-25 of the specification for a first embodiment of the closure. It is also supported in the non-elected species. No new matter is added.

Furthermore, newly submitted claim 35 is provided which is similar to claim 1 prior to said above-described amendment, but reciting that the closure is a rigid closure. Support for this new claims is found in the original application as filed, including cap 11 shown in Figures 1-4. It is also supported in the non-elected species. No new matter is added.

**Claim Rejections – 35 USC §102**

At pages 2-6, claims 1, 3, 4, 7-11, 15, 16, 19, and 20 are rejected under 35 USC §102(b) as anticipated by Morton.

With respect to claim 1, the Office asserts that Morton discloses a dispenser having the features recited in claim 1. Specific reliance is made to Figure 31, including body 200, dispensing orifice 216, container 12, mechanism 18, displaceable element 18, multi-use counter 10, dispense action detector 82, and accommodation in the body 200, 40 and a wrapper which the Office equates to a closure with specific reference to Morton, column 11, line 43.

With respect to dependent claim 3, the Office further asserts that Morton discloses a dispenser wherein the wrapper is adapted to be irremovably connected to the body. The Office makes the parenthetical statement that the wrapper is irremovable until it is destroyed or removed. For the reasons presented below, applicant respectfully submits that claim 1 as amended is not anticipated or suggested by Morton.

Initially, applicant makes the observation in reply to the above-mentioned parenthetical statement concerning claim 3, that any item connected to another item is irremovable until such time that it is removed. Thus, the statement that the wrapper disclosed in Morton at column 11, line 43 is irremovable until such time that it is removed in no way teaches a closure which is provided with a frangible portion where the closure is irremovably connected to the body. As discussed above and as clearly shown in the figures and description of the present application, each of the embodiments of the cap or end plug forming a closure are irremovably connected to the body and each has a frangible portion through which the multi-use counter can be removed. When such frangible portion is broken, such as severing of disc 23 (the frangible portion of closure 11), the remainder of the closure (cap 11) is still irremovably connected to the body and thus the closure is tamper-evident. If, as argued by the Office, the wrapper discussed in Morton at column 11, line 43 is removed from the body, there is no portion of the wrapper remaining which would be tamper-evident upon removal of multi-use counter 10.

Furthermore, any such wrapper in Morton does not provide a frangible portion through which the counter is removed. Clearly, if the wrapper of Morton is removed, the multi-use counter is simply released from the body, but it does not pass through the wrapper even if the wrapper is considered to be a frangible portion. Furthermore, it is not

seen how a wrapper could be a frangible portion in that if, as argued by the Office, it is the closure, then it is the entire closure and therefore there is no portion of the wrapper which is frangible. It is either entirely connecting the body to the multi-use counter or it is entirely removed from the body so as to allow removal of the counter from the body. In short, Morton does not show a closure having a frangible portion.

To emphasize this distinction of the present invention over Morton, applicant has amended claim 1 to include the feature of claim 3 and to state that it is the frangible portion of the closure through which the multi-use counter can be removed. This, again, is clearly discussed in the application as filed, including showing how the electronic counter 25 can be released from cap 11 upon severing of disc 23 forming the frangible portion of the cap.

For all of the foregoing reasons, it is therefore respectfully submitted that claim 1 is neither anticipated nor suggested by Morton.

Dependent claims 4, 7, 11, 15, 16, 19, and 20 are also not anticipated nor suggested by Morton at least in view of their ultimate dependency from amended claim 1.

Newly submitted claim 35 is similar to claim 1 prior to amendment, but adding the feature that the closure is rigid. As discussed above, support for this amendment is found in the three embodiments of the closure shown by the caps and end plugs described in the present application. Each of those caps and end plugs are rigid.

It is clear that the recited wrapper in Morton is not rigid. It is therefore respectfully submitted that newly submitted claim 35 is neither disclosed nor suggested by Morton.

Dependent claims 36-40 corresponding to claims 7-11 respectively, but ultimately dependent upon newly submitted claim 35, are also believed to be neither anticipated nor suggested by Morton at least in view of their ultimate dependency from claim 35.

### **Claim Rejections – 35 USC §103**

At pages 6-7, dependent claims 23-25 are rejected under 35 USC §103(a) as unpatentable over Morton in view of Bacon (US patent application publication 2004/0069301). Dependent claims 23-25 depend from amended claim 1 and it is

Application Serial No.: 10/582,656  
Attorney Docket No. 508-051.008

therefore respectfully submitted that each of these dependent claims is allowable at least in view of such dependency.

In view of the foregoing, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

The Commissioner is hereby authorized to charge to deposit account 23-0442 any fee deficiency required to submit this paper.

Respectfully submitted,

Dated: February 27, 2012

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